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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,396	03/23/2004	Isao Miyachi	250786US3X	2344
22850	7590	11/30/2005		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER COLLADO, CYNTHIA FRANCISCA	
			ART UNIT 3618	PAPER NUMBER
DATE MAILED: 11/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,396

Applicant(s)

MIYACHI, ISAO

Examiner

Cynthia F. Collado

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/23/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1,2 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Watanabe et al'925 (US Patent No.6, 922,925).

3. Regarding claim 1, Watanabe discloses a lower traveling body, (see figure 10, element 51), an upper rotating body rotatably mounted on said lower traveling body, the upper rotating body having an upper frame; devices and an accessory mounted on said upper frame, said devices including an engine and a radiator (see figure 12, element 63 and 70), covers for covering said devices and said accessory, (see column 4, lines 47-59) a mounting member for mounting two elements selected from a group consisting of said devices, said accessory and said covers thereon; and positioning supports adapted to arrange said two elements in a predetermined position of the mounting member (see column 4, lines 17-36).

Regarding claim 2, Watanabe discloses the covers and one of the devices and the accessory are mounted on the mounting member (see column 4, lines 47-59).

Regarding claim 9, Watanabe discloses wherein the mounting member includes both a radiator mounting member for mounting said radiator and a mounting column for mounting one of the covers, wherein said radiator mounting member being provided on one lateral side at the rear part of said upper frame and said mounting column being provided on the opposite side of the radiator mounting member, and wherein said positioning supports include a seat stand having an operator's seat, said seat stand being on said upper frame, and said seat stand extends from said radiator mounting member to said mounting column in such a manner of constituting a mount base (see column 5, lines 1-19).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 3-5,6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al'925 (US Patent No.6, 922,925) in view of Imashige'798 (US Patent No.6, 427,798) further in view of Kawamura et al'831 (US Patent No.6, 729,831).

Regarding claims 3 and 5, Watanabe does not disclose a radiator duct for cooling air however Imashige teaches an openable guard cover for covering devices (figure 1, element 1), a radiator duct for guiding cooling air between the radiator and the cover (see column 2, lines 60-67) also (column 3, lines 1-4), a radiator mounting member for mounting said radiator, said mounting member being provided on one lateral side at a rear part of said upper frame, a guard cover hinge as one of the positioning supports adapted to assist positioning of said guard cover is attached on the radiator mounting member, and the radiator duct is detachably mounted on the radiator mounting member (see column 3, lines 35-45). One would be motivated to incorporate a radiator duct for cooling air on a working machine to prevent overheating of the interior of the working machine.

Regarding claims 4 and 7, Watanabe nor Imashige disclose a fulcrum, however Kawamura teaches the guard cover is openable around the guard cover hinge as fulcrum on it's opening and closing (see column 26, lines 28-35). One would be motivated to incorporate a fulcrum on a working machine guard cover to make lifting or prying of the guard cover easier.

Regarding claim 6, Watanabe discloses the covers include an openable hood for covering the backside of the engine and a side panel arranged on one lateral side at the

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rear part of the hood adjacently to the hood (see column 4, lines 47-59). Watanabe does not disclose a hood hinge, however Kawamura teaches a hood hinge as one of the positioning supports adapted to assist positioning of the hood is attached on the mounting column, and the side panel is mounted on the mounting column (see column 25, lines 39-67) also (see column 26, lines 14-36). One would be motivated to incorporate a hood hinge as one of the positioning supports adapted to assist positioning of the hood attached to the mounting column that would provide a way to open and close the hood.

Regarding claim 8, Kawamura teaches a muffler cover for covering a muffler for engine exhaust, the muffler cover being arranged in the vicinity of the hood, wherein the mounting member is a mounting column provided on one lateral side at the rear part of the upper frame (see column 7, lines 53-64) also (see column 23, lines 50-67).

Regarding claim 10, Kawamura teaches a hood hinge that serves as fulcrum on opening and closing the hood is attached to one of the radiator mounting member and the mounting column and a hood catch for keeping the hood in a closed state is attached to the other, the hood hinge and the hood catch serving as the positioning supports (see column 26, lines 28-67).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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US Patent No.6, 922,925 issued to Watanabe et al teaches a construction machine.

US Patent No.6, 729,831 issued to Kawamura et al teaches a swing-working machine.

US Patent No.6, 427,798 issued to Imashige teaches a construction machine with a muffler-cooling vent.

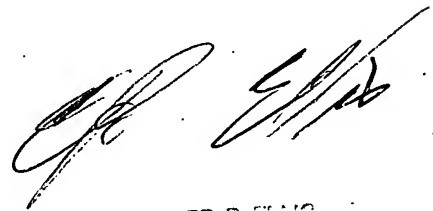
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571)272-8315. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cynthia F. Collado

11/16/08


CHRISTOPHER R. KING
SUPERVISOR
ART UNIT 3618